

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

RESOLUTION R8-2020-0053

**RESOLUTION SUPPORTING A LIST OF SUPPLEMENTAL ENVIRONMENTAL
PROJECTS (SEPS) AND ENHANCED COMPLIANCE ACTIONS (ECAS) FOR
CONSIDERATION IN ENFORCEMENT SETTLEMENT NEGOTIATIONS**

WHEREAS, The California Regional Water Quality Control Board, Santa Ana Region, (hereinafter, the Santa Ana Water Board) finds that:

1. Authority to Issue Monetary Penalties: The Porter Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7) authorizes the Regional Water Boards to impose administrative civil liabilities (i.e. monetary penalties) for water quality violations alleged in an Administrative Civil Liability (ACL) Complaint.
2. Supplemental Environmental Projects (SEPs): Pursuant to the State Water Resources Control Board's (State Water Board's) Policy on Supplemental Environmental Projects (2017 SEP Policy), SEPs are defined as projects that further the Water Boards' mission to "preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations." Part of this mission includes but is not limited to the following: furthering the human right to water; ensuring environmental justice; benefiting disadvantaged communities; and addressing climate change. At the time SEPs or ECAs are included in the resolution of an ACL action or negotiated settlement order the project is not otherwise required of the discharger in any other order or legal requirement. SEPs are intended to restore the environmental harm resulting from the violation(s) alleged.
3. Enhanced Compliance Actions (ECAs): Pursuant to the State Water Board's Water Quality Enforcement Policy (2017 Enforcement Policy), ECAs are defined as projects that enable a discharger to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring a discharger into compliance. ECAs are intended to prevent additional or future impacts to beneficial uses.
4. How SEPs and ECAs are Used: Pursuant to statewide SEP and Enforcement Policies, a discharger that has been assessed an ACL (monetary penalty) by a Water Board may choose to satisfy up to 50 percent of their liability by funding an eligible SEP or ECA. That portion of the liability (i.e. SEP or ECA dollar amount) is suspended until the discharger can demonstrate successful completion of the

proposed project, at which time it is dismissed. A discharger can either conduct the SEP or ECA itself, or contract with a third party for completion of the project.

5. Discharger: For ease of reference and because the SEP Policy applies broadly to classes of parties commonly referred to in a variety of ways, including, but not limited to, dischargers, diverters, regulated public, violators and responsible parties, the SEP policy uses the term settling parties universally and this resolution uses the term discharger.
6. Assembly Bill 1071 Directive: In October 2015, Assembly Bill 1071 was signed into law requiring, in part, that all boards, departments, and offices within CALEPA that have enforcement authority, develop an annual SEP list designed to benefit environmental justice (EJ) communities and disadvantaged communities (DACs).
7. Eligibility Criteria Reflect Regional Priorities and State Directives: In developing the Water Board's SEP/ECA solicitation and application materials, Staff established eligibility requirements specifically designed to reflect the SEP Policy and Regional Board's priorities.
8. Solicitation of Proposals: SEP/ECA project proposals were solicited from the public from August 8, 2019 through October 10, 2019. In 2020 staff reached out to staff from the State Water Board's Division of Drinking Water (DDW) and asked for projects that would directly benefit environmental justice communities and disadvantaged communities with impaired water systems, in accordance with the State's Human Right to Water Policy (California Water Code Section 106.3) and the Santa Ana Water Board's Resolution R8-2019-0078. Application materials were distributed to the operators of water systems at risk of losing access to safe, clean and affordable drinking water. The attached 2021 Revised SEP List includes those project that were provided by the DDW staff.
9. Recommended List: Staff's recommended "Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board" hereinafter "SEP/ECA List" is attached.
10. Continuous SEP/ECA Solicitation and List Update: Staff will provide the Board with an updated list each year (i.e., adding new projects and removing completed or expired projects). The Board delegates to the Executive Officer the authority to accept, review, and add new projects to the SEP/ECA List at any time, on a continuous basis. Project proposals will be logged in as received and reviewed as staff resources are available.
11. Third Party Administrator: A third-party administrator of the SEP/ECA List could reduce the substantial administrative workload of the Water Board associated with SEPs, ECAs, and maintenance of the SEP/ECA List. At this time Board staff do not have any external parties that could take on that task.

THEREFORE, BE IT RESOLVED THAT:

1. Adoption of the Resolution/Approval of the SEP/ECA List: The Santa Ana Water Board accepts the recommended current year's SEP/ECA List, hereinafter incorporated as part of this Resolution. Proposed projects on the List shall be immediately available to applicable and interested dischargers during enforcement settlement negotiations.
2. Support for SEP/ECA List Application Materials and Evaluation Methodology: The use of the application materials, evaluation methodology and selection priorities used for the SEP/ECA List should continue until updated.
3. Executive Officer Discretion to Modify Application Materials, Evaluation Methodology and Selection Process: For purposes of administrative streamlining, the Santa Ana Water Board grants the Executive Officer the discretion to modify the Eligibility Requirements or other details related to the SEP/ECA List application materials, evaluation and selection methodology, and Executive Officer approved SEP List to include the overall process as he/she deems appropriate, or necessary to meet Regional Board priorities or State Board Policy.
4. Executive Officer Discretion to Add Projects to Pre-Approved SEP/ECA List: To further increase the efficient use of its resources, the Santa Ana Water Board grants the Executive Officer the discretion to accept applications on a continuous basis, review applications as resources allow, add new projects to the existing SEP/ECA List at any future time as he/she deems appropriate, remove projects from the list if a project is no longer considered applicable or eligible.
5. Desirability of, and Need for, Third Party Administrator: The Santa Ana Water Board supports the use of a Third Party Administrator to collect, oversee, and distribute SEP/ECA funds, manage ongoing projects, and maintain and update the SEP/ECA List. The Santa Ana Water Board directs the Executive Officer to search for a suitable third party with which to contract for this purpose, and if one is found, authorizes the Executive Officer to develop appropriate contract language, in consultation with legal counsel and the third party
6. Need for Permanent Staff Resources to Manage Ongoing SEP/ECA Projects: In the absence of a Third Party Administrator, the Santa Ana Water Board recognizes that staff must expend significant time and resources in the oversight/management of ongoing SEP/ECA projects, especially those with long implementation schedules, as well as on the update and maintenance of the SEP/ECA List itself. For this reason and purpose, the Water Board encourages the Executive Officer to pursue the addition of staff resources through any appropriate means.
7. This Order rescinds and replaces Resolution R8-2019-0074.

I, Hope A. Smythe, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on December 4, 2020.

Hope A. Smythe
Executive Officer